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15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

EDL

17 VALERIE FRANCO, on behalf of herself and)
 18 all others similarly situated,)

19 Plaintiff,)

20 vs.)

21 CONSUMER PORTFOLIO SERVICES,)
 22 INC.; and DOES 1 through 10, inclusive, and)
 23 each of them,)

24 Defendants.)

Case No.

6 13 - 1364

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]
2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]

DEMAND FOR JURY TRIAL

1 Plaintiff, Valerie Franco ("Plaintiff"), on behalf of herself and all others similarly
2 situated, alleges the following upon information and belief based upon personal knowledge:

3 **NATURE OF THE CASE**

4 1. Plaintiff brings this action for herself and others similarly situated seeking
5 damages and any other available legal or equitable remedies resulting from the illegal actions
6 of Consumer Portfolio Services, Inc. ("Defendant" or "CPS"), in negligently, knowingly,
7 and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the
8 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA"), thereby invading
9 Plaintiff's privacy.

10 **JURISDICTION & VENUE**

11 2. This Court has federal question jurisdiction because this case arises out of
12 violations of federal law. 47 U.S.C. § 227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740
13 (2012).

14 3. Venue is proper in the United States District Court for the Northern District of
15 California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Plaintiff resides in
16 the County of Alameda, which is located within the Northern Judicial District of California.

17 **PARTIES**

18 4. Plaintiff, Valerie Franco ("Plaintiff"), is a natural person residing in California
19 and is a "person" as defined by 47 U.S.C. § 153 (10).

20 5. Defendant, Consumer Portfolio Services, Inc. ("Defendant" or "CPS"), is a
21 national leader in the consumer debt recovery industry and is a "person" as defined by 47
22 U.S.C. § 153 (10).

23 6. The above named Defendant, and its subsidiaries and agents, are collectively
24 referred to as "Defendants." The true names and capacities of the Defendants sued herein as
25 DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who
26 therefore sues such Defendants by fictitious names. Each of the Defendants designated herein
27 as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
28 Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants

1 when such identities become known.

2 7. Plaintiff is informed and believes that at all relevant times, each and every
3 Defendant was acting as an agent and/or employee of each of the other Defendants and was
4 acting within the course and scope of said agency and/or employment with the full knowledge
5 and consent of each of the other Defendants. Plaintiff is informed and believes that each of the
6 acts and/or omissions complained of herein was made known to, and ratified by, each of the
7 other Defendants.

8 **FACTUAL ALLEGATIONS**

9 8. Beginning in or around late January 2013, Defendant contacted Plaintiff on her
10 cellular telephone, ending in 2698, in an attempt to collect an alleged outstanding debt owed by
11 a Plaintiff's daughter, Danielle Herrera, ("Ms. Herrera").

12 9. On multiple instances, Defendant placed at least three (3) calls in a single day to
13 Plaintiff's cellular telephone, seeking to collect the alleged debt owed by Ms. Herrera, despite
14 being informed on multiple occasions, that Plaintiff's cellular phone does not belong to Ms.
15 Herrera.

16 10. Defendant used an "automatic telephone dialing system", as defined by 47
17 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to collect the debt allegedly owed by
18 her daughter.

19 11. Defendant's calls constituted calls that were not for emergency purposes as
20 defined by 47 U.S.C. § 227(b)(1)(A).

21 12. Defendant's calls were placed to telephone number assigned to a cellular
22 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
23 227(b)(1).

24 13. On several occasions, Plaintiff answered Defendant's telephone call and
25 informed an agent for Defendant that: 1) Ms. Herrera cannot be reached on Plaintiff's
26 telephone; 2) that Defendant has an incorrect telephone number and; 3) that Defendant must
27 cease placing such calls to Plaintiff.

14. Despite receiving this information on numerous occasions, Defendant continued to place calls to Plaintiff, on her cellular telephone, using an “automated telephone dialing system,” seeking to collect the alleged debt owed by Ms. Herrera.

15. Plaintiff does not owe the alleged debt Defendant sought to collect, is not a customer of Defendant’s services, and has never provided her cellular telephone number to Defendant for any purpose whatsoever. Accordingly, Defendant never received Plaintiff’s “prior express consent” to receive calls using an automatic telephone dialing system on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

CLASS ALLEGATIONS

16. Plaintiff brings this action on herself and all others similarly situated, as a member of the proposed class (hereafter “The Class”) defined as follows:

All persons within the United States who received any telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

17. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

18. Defendant, its employees and agents are excluded from The Class. Plaintiff do not know the number of members in The Class, but believe the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

19. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff are informed and believe and thereon allege that The Class includes thousands of members.

1 Plaintiff alleges that The Class members may be ascertained by the records maintained by
2 Defendant.

3 20. Plaintiff and members of The Class were harmed by the acts of Defendant in at
4 least the following ways: Defendant illegally contacted Plaintiff and Class members via their
5 cellular telephones thereby causing Plaintiff and Class members to incur certain charges or
6 reduced telephone time for which Plaintiff and Class members had previously paid by having
7 to retrieve or administer messages left by Defendant during those illegal calls, and invading
8 the privacy of said Plaintiff and Class members.

9 21. Common questions of fact and law exist as to all members of The Class which
10 predominate over any questions affecting only individual members of The Class. These
11 common legal and factual questions, which do not vary between Class members, and which
12 may be determined without reference to the individual circumstances of any Class members,
13 include, but are not limited to, the following:

14 a. Whether, within the four years prior to the filing of this Complaint, Defendant
15 made any call (other than a call made for emergency purposes or made with the prior
16 express consent of the called party) to a Class member using any automatic telephone
17 dialing system any telephone number assigned to a cellular telephone service;

18 b. Whether Plaintiff and the Class members were damaged thereby, and the extent
19 of damages for such violation; and

20 c. Whether Defendant should be enjoined from engaging in such conduct in the
21 future.

22 22. As individuals who received numerous calls from Defendant using an
23 automatic telephone dialing system, without Plaintiff's prior express consent, Plaintiff is
24 asserting claims that are typical of The Class.

25 23. Plaintiff will fairly and adequately protect the interests of the members of The
26 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

27 24. A class action is superior to other available methods of fair and efficient
28 adjudication of this controversy, since individual litigation of the claims of all Class members

1 is impracticable. Even if every Class member could afford individual litigation, the court
2 system could not. It would be unduly burdensome to the courts in which individual litigation
3 of numerous issues would proceed. Individualized litigation would also present the potential
4 for varying, inconsistent, or contradictory judgments and would magnify the delay and
5 expense to all parties and to the court system resulting from multiple trials of the same
6 complex factual issues. By contrast, the conduct of this action as a class action presents fewer
7 management difficulties, conserves the resources of the parties and of the court system, and
8 protects the rights of each Class member.

9 25. The prosecution of separate actions by individual Class members would create
10 a risk of adjudications with respect to them that would, as a practical matter, be dispositive of
11 the interests of the other Class members not parties to such adjudications or that would
12 substantially impair or impede the ability of such non-party Class members to protect their
13 interests.

14 26. Defendant has acted or refused to act in respects generally applicable to The
15 Class, thereby making appropriate final and injunctive relief with regard to the members of the
16 Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 **Negligent Violations of the Telephone Consumer Protection Act**

19 **47 U.S.C. §227 et seq.**

20 27. Plaintiff repeats and incorporates by reference into this cause of action the
21 allegations set forth above at Paragraphs 1-29.

22 28. The foregoing acts and omissions of Defendant constitute numerous and
23 multiple negligent violations of the TCPA, including but not limited to each and every one of
24 the above cited provisions of 47 U.S.C. § 227 et seq.

25 29. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,
26 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for
27 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
28

1 30. Plaintiff and the Class members are also entitled to and seek injunctive relief
2 prohibiting such conduct in the future.

3 **SECOND CAUSE OF ACTION**

4 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

5 **47 U.S.C. §227 et seq.**

6 (Against All Defendants)

7 31. Plaintiff repeats and incorporates by reference into this cause of action the
8 allegations set forth above at Paragraphs 1-33.

9 32. The foregoing acts and omissions of Defendant constitute numerous and
10 multiple knowing and/or willful violations of the TCPA, including but not limited to each and
11 every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

12 33. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227*
13 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory
14 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. §*
15 *227(b)(3)(C)*.

16 34. Plaintiff and the Class members are also entitled to and seek injunctive relief
17 prohibiting such conduct in the future.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

20 **FIRST CAUSE OF ACTION**

21 **Negligent Violations of the Telephone Consumer Protection Act**

22 **47 U.S.C. §227 et seq.**

- 23 • As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)(1)*,
24 Plaintiff and the Class members are entitled to and request \$500 in statutory
25 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.
26 • Any and all other relief that the Court deems just and proper.
27
28

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

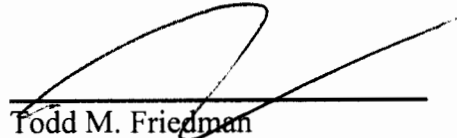
47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted March 14, 2013

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By:


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